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EDITOR'S NOTE

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PROCEEDINGS AND ORDERS DATE: 062687

CASE NBR 86-1-01505 CSX CASE STATUS: DECIDED
SHORT TITLE Prestress Engineering Corp. DOCKETED: Mar 14 1987
VERSUS Gonzalez, Jose I., et al.

Entry	Date	Note	Proceedings and Orders
1	Mar 14 1987	D	Petition for writ of certiorari filed.
2	Apr 15 1987		DISTRIBUTED. May 1, 1987
3	Apr 27 1987	r	Response requested -- BRW, JPS. (Due May 27, 1987 - NONE RECEIVED)
5	May 28 1987		Order extending time to file response to petition until May 30, 1987.
6	May 30 1987	x	Brief of respondents Jose I. Gonzalez, et al. in opposition filed.
7	Jun 2 1987		REDISTRIBUTED. June 18, 1987
9	Jun 19 1987		REDISTRIBUTED. June 25, 1987
10	Jun 26 1987		Petition DENIED. Dissenting opinion by Justice White. (Detached opinion.)

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PETITION FOR WRIT OF CERTIORARI

86 1505

No.

In the

Supreme Court of the United States

OCTOBER TERM, 1986

PRESTRESS ENGINEERING CORPORATION,
Petitioner,

v.

JOSE ISABEL GONZALEZ AND JOHN REPYAK,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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QUESTION PRESENTED

The issue in this case is whether a state tort claim of wrongful or retaliatory discharge, filed by an employee protected by a collective bargaining agreement, is preempted by federal labor law or barred by failure to exhaust the grievance procedure.

RULE 28.1 LISTING

The petitioner, Prestress Engineering Corporation, is a subsidiary of Road Materials Corporation. Concrete Engineering Company is another subsidiary of Road Materials Corporation. Road Materials Corporation is a subsidiary of E. M. Melahn Construction Company. Other subsidiaries of E. M. Melahn Construction Company are Giertz Melahn Asphalt Company, Inc., Suburban Ready Mix Company, and Standard Ready Mix Company.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

The petitioner, Prestress Engineering Corporation, respectfully prays that a writ of certiorari issue to review the decision of the Supreme Court of Illinois issued on December 19, 1986.

OPINIONS BELOW

The opinion of the Supreme Court of Illinois (App. at 1a) is not yet reported. *Gonzalez* v. *Prestress Engineering Corp.*, Nos. 62644, 62645 (Ill. Sup. Ct. Dec. 19, 1986). The orders of the Circuit Court of the Eleventh Judicial Circuit, Livingston County, Illinois and the Appellate Court of Illinois, Fourth District are unpublished but set forth in the appendix. (App. at 17a-20a).

JURISDICTION

The opinion of the Supreme Court of Illinois was filed on December 19, 1986. (App. at 1a). No petition for rehearing was filed. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(3).

STATUTE INVOLVED

29 U.S.C. § 185(a). Suits by and against labor organizations.

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

STATEMENT OF THE CASE

Respondents each filed suit in state court, claiming petitioner wrongfully discharged them from employment because they filed claims under the Illinois Workers' Compensation Act, Ill. Rev. Stat. ch. 48, § 138 (1985). Both respondents were members of a union, the North Central Illinois Laborers' District Council on behalf of Laborers' Local No. 996, and covered by a collective bargaining agreement which required "just cause" for discharge. The collective bargaining agreement contained a grievance procedure culminating in final and binding arbitration. Neither respondent filed a grievance. Instead, each respondent filed a civil suit, claiming wrongful discharge.

Respondents' suits, consolidated by the Supreme Court of Illinois, initially were dismissed by the trial court because respondents failed to pursue the grievance procedure. The Appellate Court of Illinois, Fourth District, affirmed in an unpublished opinion. *Gonzalez* v. *Prestress Engineering Corp.*, Nos. 4-83-0292, 4-83-0293 (Ill. App. Ct. 1983). On appeal, after consolidating these cases with *Midgett* v. *Sackett-Chicago, Inc.*, 105 Ill.2d 143, 473 N.E. 2d 1280 (1984), *cert. denied* 472 U.S. 1032 (1985), the Supreme Court of Illinois held that union employees covered by a collective bargaining agreement have a tort cause of action for retaliatory discharge for filing a workers' compensation claim.

On remand, petitioner filed an answer to each complaint, raising two affirmative defenses based on this Court's decision in *Allis-Chalmers Corp.* v. *Lueck*, 105 S.Ct. 1904 (1985), decided shortly after *Midgett* v. *Sackett-Chicago, Inc.*: (1) the claims are preempted by section 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a); and (2) the claims are barred by the failure to exhaust the grievance procedure. Respondents moved to strike the affirmative defenses. Although the trial court granted the motions to strike, the court certified the questions raised in the affirmative defenses for interlocutory appeal. (App. at 17a-18a). The Appellate Court of Illinois denied leave to appeal (App. at 19a-20a), but the Supreme Court of Illinois granted leave to appeal.

With two justices dissenting, the Supreme Court of Illinois distinguished this Court's decision in *Allis-Chalmers Corp.* v. *Lueck*, 105 S. Ct. 1904 (1985), and concluded that respondents' wrongful discharge claims were neither preempted by federal labor law nor barred by failure to exhaust the grievance procedure. The court based its conclusion on the premise that evaluation of the tort claims "in no way depends upon an interpretation of the 'just cause' provision of the labor contract." *Gonzalez* v. *Prestress Engineering Corp.*, Nos. 62644, 62645, slip op. at 7 (Ill. Sup. Ct. Dec. 19, 1986).

REASONS FOR GRANTING THE WRIT

I.

The decision of the Supreme Court of Illinois conflicts with decisions of this Court and decisions of the United States Courts of Appeals.

The Supreme Court of Illinois misapplied this Court's decision in *Allis-Chalmers Corp.* v. *Lueck,* 105 S. Ct. 1904 (1985). *Allis-Chalmers* involved a state tort claim that the employer made payments under a disability plan, incorporated into a collective bargaining agreement, in bad faith. The employee never attempted to grieve the dispute. This Court held that "when resolution of a state-law claim is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract, that claim must either be treated as a § 301 claim . . . or dismissed as pre-empted by federal labor-contract law." *Id.* at 1916.

Like the tort claims in *Allis-Chalmers*, resolution of these wrongful discharge claims cannot be made independently of the collective bargaining agreement which requires "just cause" for discharge. The wrongful discharge claims could have been pleaded as breach of contract claims under section 301 of the Labor Management Relations Act, and federal law must uniformly be applied to matters of contract interpretation. *Teamsters* v. *Lucas Flour,* 369 U.S. 95 (1962).

These claims must be preempted by section 301 in order to avoid bypassing the role of arbitration in every case in which an employee can plead his breach of contract claim as a tort claim. Otherwise, "[c]laims involving vacation or overtime pay, work assignment, *unfair*

discharge—in short, the whole range of disputes traditionally resolved through arbitration—could be brought in the first instance in state court by a complaint in tort rather than in contract." *Allis-Chalmers*, 105 S.Ct. at 1915 (emphasis added).

Through its opinion, the Supreme Court of Illinois has sanctioned two evils specifically prohibited by this Court in *Allis-Chalmers*, allowing state law to determine the meaning of provisions in a collective bargaining agreement, contrary to federal labor policy which requires a uniform body of labor-contract law, and allowing employers to completely bypass arbitration, eviscerating the effectiveness of the arbitration procedure.[1]

The Supreme Court of Illinois' decision in this case also conflicts with decisions of the United States Courts of Appeals. The Eighth Circuit, applying *Allis-Chalmers*, has concluded that a state tort claim for retaliatory discharge for filing a workers' compensation claim is preempted by federal labor law because the claim is "substantially dependent" upon an analysis of the collective bargaining agreement. *Johnson* v. *Hussmann Corp.*, 805 F.2d 795 (8th Cir. 1986). In affirming a district court decision, the Third Circuit has reached the same conclusion. *Costello* v. *United Parcel Service, Inc.*, 774 F.2d 1150 (3d Cir. 1985), *aff'g.*, 617 F. Supp. 123 (E. D. Pa. 1984). Addressing the issue in the context of removal jurisdiction, the Seventh Circuit has agreed that "an allegation of discharge in retaliation for filing a work-

[1] The Supreme Court of Illinois has held, however, that a retaliatory discharge suit for filing an FELA claim by an employee covered by the Railway Labor Act is preempted by the RLA. *Koehler* v. *Illinois Central Gulf Railroad Co.*, 109 Ill. 2d 473, 488 N.E.2d 542 (1985).

men's compensation claim is an allegation of a breach of the collective bargaining agreement, it arises under section 301 of the Labor Management Relations Act . . . ." *Vantine* v. *Elkhart Brass Mfg. Co.*, 762 F.2d 511, 517 (7th Cir. 1985).

II.

The Court should provide guidance to the lower courts on an important issue of federal labor law.

The past decade has spawned a host of wrongful discharge suits across the nation. In those suits involving union employees covered by a collective bargaining agreement, requiring just cause for discharge and arbitration of disputes, both state and federal courts have struggled to determine the contours of federal preemption with divergent results.

Following *Allis-Chalmers*, some courts have acknowledged the "wide-ranging preemptive impact of § 301." *Waycaster* v. *AT&T Technologies, Inc.*, 636 F. Supp. 1052 (N.D. Ill. 1986), *appeal docketed*, No. 86-1547 (7th Cir. April 8, 1986). *See also Piscitelli* v. *Krack Corp.*, No. 85 C 6537 (N.D. Ill. Jan. 7, 1986) (retaliatory discharge for filing workers' compensation claim must be based on section 301); *Clark* v. *Momence Packing Co.*, Nos. 85-2254, 85-2255, 85-2256, 85-2257, 85-2258 (consol.) (C.D. Ill. Nov. 21, 1985), *appeal docketed*, No. 81-3165 (7th Cir. Dec. 17, 1985) (Illinois tort of retaliatory discharge preempted by federal labor law); *Curry* v. *General Motors Corp.*, No. 85 C 1938 (N.D. Ill. Oct. 11, 1985) (state law claim for failure to reinstate employee preempted by section 301); *Lingle* v. *Norge Division of Magic Chef, Inc.*, 618 F. Supp. 1448 (S.D. Ill. 1985), *appeal docketed*, No. 85-2971 (7th

Cir. Nov. 12, 1985) (section 301 preempts claim employee was discharged for exercising her rights under the Illinois Workers' Compensation Act).

Other courts have held that section 301 does not preempt a wrongful or retaliatory discharge suit. *E.g.*, *Herring* v. *Prince Macaroni*, 799 F.2d 120 (3d Cir. 1986) (retaliation for filing workers' compensation claim not preempted); *MGM Grand Hotel-Reno* v. *Insley*, 728 P.2d 821 (Nev. Sup. Ct. 1986) (retaliatory discharge claim not preempted). In order to provide guidance to state and federal courts grappling with the preemption issue as applied to wrongful discharge suits, the Court should grant this petition for certiorari.

CONCLUSION

Petitioner respectfully prays that a writ of certiorari issue to review the decision of the Supreme Court of Illinois.

Respectfully submitted,

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March 10, 1987

APPENDIX

Docket Nos. 62644, 62645 cons.—Agenda 15—September 1986.

JOSE ISABEL GONZALEZ, Appellee, v. PRESTRESS ENGINEERING CORPORATION, Appellant.—JOHN REPYAK *et al.*, Appellees, v. PRESTRESS ENGINEERING CORPORATION, Appellant.

CHIEF JUSTICE CLARK delivered the opinion of the court:

In *Midgett v. Sackett-Chicago, Inc.* (1984), 105 Ill. 2d 143, *cert. denied* (1985), 474 U.S. ....., 88 L. Ed. 2d 243, 106 S.Ct. 278; *cert. denied* (1985), 472 U.S. 1032, 87 L. Ed. 2d 642, 105 S. Ct. 3513, this court held that a tort action for retaliatory discharge for exercising rights under the Workers' Compensation Act (Ill. Rev. Stat. 1981, ch. 48, par. 138.1 *et seq.*), established in *Kelsay v. Motorola, Inc.* (1978), 74 Ill. 2d 172, as a remedy available to at-will employees, was equally available to unionized employees covered by a collective-bargaining agreement. We allowed leave to appeal in these consolidated cases to determine whether, in light of the subsequent Supreme Court decision in *Allis-Chalmers Corp. v. Lueck* (1985), 471 U.S. ....., 85 L. Ed. 2d 206, 105 S. Ct. 1904, section 301 of the Labor Management Relations Act (section 301) (29 U.S.C. sec. 185(a) (1982)) preempts the independent State tort action recognized in *Midgett*, and whether failure to exhaust grievance procedures established in a collective-bargaining agreement bars the action.

The two cases consolidated in this appeal were first before this court, together with a third consolidated case,

in *Midgett v. Sackett-Chicago, Inc.* (1984), 105 Ill. 2d 143, *cert. denied* (1985), 474 U.S. ....., 88 L. Ed. 2d 243, 106 S. Ct. 278; *cert. denied* (1985), 472 U.S. 1032, 87 L. Ed. 2d 642, 105 S. Ct. 3513. We briefly review the facts and procedural history of both cases.

In August 1981, plaintiff Jose Gonzales filed a workers' compensation claim with the Industrial Commission for an injury he suffered while employed by defendant, Prestress Engineering Corporation (Prestress). On August 23, 1982, an Industrial Commission arbitrator denied the claim, finding that Gonzalez' injury did not arise out of and in the course of his employment. Gonzalez was discharged on September 20, 1982. Plaintiff John Repyak also sustained injury while employed by Prestress, and in July 1981 was awarded $12,601 in benefits under the Workers' Compensation Act. Repyak was terminated on Octbber 6, 1982.

As union members of Laborers' Local No. 996 of the North Central Illinois Laborers' District Council, Gonzalez and Repyak were covered by a collective-bargaining agreement between the local and Prestress. The agreement requires "just cause" for discharge and establishes a four-step grievance procedure culminating in final and binding arbitration if the local pursues the grievance to that extent. Neither Gonzalez nor Repyak filed grievances concerning their respective terminations. Instead, they filed separate complaints in the circuit court of Livingston County alleging that Prestress had discharged them in retaliaition for their filing workers' compensation claims under the Workers' Compensation Act. Both Gonzalez and Repyak aver in their complaints that Prestress informed them that they were being discharged because they filed claims for benefits under the Workers' Com-

pensation Act (Ill. Rev. Stat. 1981, ch. 48, par. 138.1 *et seq.*), and aver that there was no other reason for their discharge.

In both cases, the circuit court granted Prestress' motion to dismiss for failure to state a cause of action. The appellate court affirmed both dismissals and, in *Midgett*, we reversed the circuit and appellate court judgments and remanded the causes for proceedings consistent with our holding there, that the complaints stated a valid tort claim for retaliatory discharge in violation of clearly mandated public policy. On remand, Prestress filed answers to each complaint, raising two affirmative defenses: (1) that each claim is preempted by section 301; and (2) that each claim is barred for failure to pursue and exhaust the grievance procedure provided by the collective-bargaining agreement.

Gonzalez and Repyak moved to strike the affirmative defenses. The circuit court granted the motions but found that a question of law existed on which there was a substantial difference of opinion and that an immediate appeal from the interlocutory order under our Rule 308 (87 Ill. 2d R. 308) would materially advance the ultimate termination of the litigation. The appellate court denied Prestress' petitions for interlocutory appeal. We granted leave to appeal to consider Prestress' affirmative defenses in light of *Allis-Chalmers Corp. v. Lueck* (1985), 471 U.S. ....., 85 L. Ed. 2d 206, 105 S. Ct. 1904.

On its face, section 301 vests jurisdiction over suits for breach of collective-bargaining agreements only in the Federal district courts. (29 U.S.C. sec. 185(a) (1982).) However, in *Charles Dowd Box Co. v. Courtney* (1962), 368 U.S. 502, 7 L. Ed. 2d 483, 82 S. Ct. 519, the Supreme

Court found that, in enacting section 301, Congress intended both State and Federal courts to have concurrent jurisdiction over suits alleging a breach of a collective-bargaining agreement. Although State courts have concurrent jurisdiction over section 301 claims, principles of Federal labor law preempt inconsistent State law. (*Teamsters v. Lucas Flour Co.* (1962), 369 U.S. 95, 104, 7 L. Ed. 2d 593, 600, 82 S. Ct. 571, 577.) Based upon the recent decision of *Allis-Chalmers Corp. v. Lueck* (1985), 471 U.S. ....., 85 L. Ed. 2d 206, 105 S. Ct. 1904, where the Supreme Court extended the contours of section 301 to include State tort claims derived from a labor contract, Prestress argues that the instant claims fall within the preemptive ambit of section 301.

In *Allis-Chalmers*, a unionized employee filed suit against both his employer and an insurance company which administered the disability plan incorporated into the collective-bargaining agreement between the employer and the union. A separate letter of understanding, binding upon the parties, created a three-step grievance procedure for disputes concerning disability payments under the plan. Dissatisfied with the manner in which disability payments were made following a nonoccupational injury, the employee alleged bad-faith handling of his disability claim, a tort under Wisconsin law. The Wisconsin Supreme Court found that a tort claim of bad faith was distinguishable from a bad-faith breach-of-contract claim and thus concluded that the action did not arise under section 301.

The United States Supreme Court reversed, holding that the State tort claim was preempted by section 301. In so doing, the Supreme Court first found that congressional policy favoring the administration of collective-

bargaining agreements under a uniform body of Federal law required that the preemptive force of section 301 extend beyond suits for breach of a labor contract. "Any other result" the court reasoned, "would elevate form over substance and allow parties to evade the requirements of section 301 by re-labeling their contract claims as claims for tortious breach of contract." *Allis-Chalmers Corp. v. Lueck* (1985), 471 U.S. ....., ..., 85 L. Ed. 2d 206, 215, 105 S. Ct. 1904, 1911. The court, however, also emphasized:

> "Of course, not every dispute concerning employment, or tangentially involving a provision of a collective-bargaining agreement, is pre-empted by section 301 or other provisions of the federal labor law. • • • In extending the pre-emptive effect of section 301 beyond suits for breach of contract, *it would be inconsistent with congressional intent under that section to pre-empt state rules that proscribe conduct, or establish rights and obligations, independent of a labor contract.*" (Emphasis added.) 471 U.S. ....., ..., 85 L. Ed. 2d 206, 215-16, 105 S. Ct. 1904, 1911-12.

With this caveat, the court framed the test as "whether the [tort claim as applied] confers non-negotiable state law rights on employers or employees independent of any right established by contract, or, instead, whether evaluation of the tort claim is inextricably intertwined with consideration of the terms of the labor contract." (471 U.S. ....., ..., 85 L. Ed. 2d 206, 216, 105 S. Ct. 1904, 1912.) After carefully examining Wisconsin case law, the court observed that the State-imposed tort duty and right asserted in the claim were actually derived from an implied covenant of good faith and fair dealing found in every contract executed in Wisconsin. The court concluded that "[b]ecause the right asserted not only derives from the

contract, but is defined by the contractual obligation of good faith, any attempt to assess liability here inevitably will involve contract interpretation." (471 U.S. ....., ..., 85 L. Ed. 2d 206, 219, 105 S. Ct. 1904, 1914-15.) The court thus held that section 301 preempted the derivative tort claim.

As an additional reason for finding preemption, the court noted that if section 301 did not preempt this type of derivative tort claim, the arbitration process would be emasculated since almost any wilful breach of contract can be brought as a tort action for breach of a good-faith duty under contract. To give a fair measure of the intended breadth of its decision, the court explained at the end of its opinion:

> "It is perhaps worth emphasizing the narrow focus of the conclusion we reach today. • • • [W]e [do not] hold that every state-law suit asserting a right that relates in some way to a provision in a collective-bargaining agreement, or more generally to the parties to such an agreement, necessarily is pre-empted by section 301. The full scope of the pre-emptive effect of federal labor-contract law remains to be fleshed out on a case-by-case basis. We do hold that when resolution of a state-law claim is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract, that claim must either be treated as a sectiton 301 claim [citation] or dismissed as pre-empted by federal labor-contract law." 471 U.S. ....., ..., 85 L. Ed. 2d 206, 221, 105 S. Ct. 1904, 1916.

We find, under the principles announced in *Allis-Chalmers*, that the instant claims plainly fall outside the preemptive sphere of section 301. In *Allis-Chalmers*, the tort claim asserted was, by its derivative nature under

Wisconsin law, a product of the labor contract, without which it could not have existed. Resolution of the tort claim was, therefore, substantially dependent upon an interpretation of the terms of the collective-bargaining agreement. Accordingly, section 301 preempted the claim. In stark contrast, the instant claims are firmly rooted in the clearly mandated public policy of this State, which, regardless of the existence or absence of a collective-bargaining agreement, confers upon all employees and employers certain nonnegotiable rights and imposes certain nonnegotiable duties and obligations.

It is well established that "[t]he foundation of the tort of retaliatory discharge lies in the protection of public policy" (*Palmateer v. International Harvester Co.* (1981), 85 Ill. 2d 124, 133), and there is clearly mandated public policy favoring protection of employees who, whether unionized or not, exercise their rights under the Workers' Compensation Act (Ill. Rev. Stat. 1985, ch. 48, par. 138.4 (h)). To effectuate Illinois' public policy of providing employees with an effective and equitable means of exercising their rights under the Act without fear or risk of termination, this court recognized in *Kelsay v. Motorola, Inc.* (1978), 74 Ill. 2d 172. an action in tort, wholly separate and independent from any contract-based action.

Prestress argues that section 301 preempts the instant claims because, it contends, an interpretation of the "just cause" provision in the collective-bargaining agreement is necessary to their adjudication. That, however, is not the law in Illinois. To prevail in an action for retaliatory discharge, an employee must show that he was discharged for his activities. and that the discharge is in violation of clearly mandated public policy. *Price v. Carmack Datsun, Inc.* (1985), 109 Ill. 2d 65, 67; *Palmateer* v. *International Harvester Co.* (1981), 85 Ill. 2d 124, 134.

Where, as here, the State tort claim is based on a duty and right firmly rooted and fixed in an important and clearly defined public policy, evaluation of the tort claim does not in any way depend upon an interpretation of the "just cause" provision in a labor contract. Certainly a determination of whether an employee has been discharged in violation of clearly mandated public policy in no way turns upon whether the discharge was or was not "just" within the meaning of a labor contract. Were it otherwise, the public policy of this State would become a mere bargaining chip, capable of being waived or altered by the private parties to a collective bargain. "Clearly, section 301 does not grant the parties to a collective-bargaining agreement the ability to contract for what is illegal under state law." *Allis-Chalmers Corp. v. Lueck* (1985), 471 U.S. ...., 85 L. Ed. 2d 206, 216, 105 S. Ct. 1904, 1912.

Prestress also relies on this court's recent decisions in *Bartley v. University Asphalt Co.* (1986), 111 Ill. 2d 318, and *Koehler v. Illinois Central Gulf R.R. Co.* (1985), 109 Ill. 2d 473, in an effort to pull the instant claims within the contours of section 301. However, Prestress' reliance on either case is misplaced. In *Bartley*, we held that the plaintiff's complaint against his union, though styled as a tort claim for civil conspiracy in furtherance of the employer's alleged retaliatory discharge of the plaintiff, essentially alleged a breach of the labor agreement and a breach of the union's duty of fair representation. Since a resolution of the claim against the union was " 'substantially dependent upon analysis of the terms of [the collective-bargaining] agreement' " (*Bartley v. University Asphalt Co.* (1986), 111 Ill. 2d 318, 332, quoting *Allis-Chalmers Corp. v. Lueck* (1985), 471 U.S. ...., 85 L. Ed.

2d 206, 221, 105 S. Ct. 1904, 1916), the claim was preempted by Federal labor-contract law.

In arguing that *Bartley* can be construed to support preemption of the instant claims, Prestress errs by failing to distinguish the fundamental difference between the claims asserted here and the claim in *Bartley,* which accordingly warrant opposite, yet consistent, conclusions under *Allis-Chalmers. Bartley* is inapposite here for precisely the same reason that the instant claims for retaliatory discharge do not come within the preemptive effect of section 301. Because the gravamen of the instant claims arises out of an alleged violation of clearly mandated public policy, as opposed to the purely private interests which arise, as in *Bartley,* from an alleged breach of the labor agreement, *Bartley* cannot be read to support a finding of preemption here. Prestress' reliance on *Koehler* is equally misplaced. *Koehler* involved the preemptive effect of the Railway Labor Act (45 U.S.C. secs. 151 through 164 (1982)) and is therefore clearly inapposite.

Because the claims asserted arise under the clear mandate of Illinois public policy, which exists independent of any privately negotiated contract rights or duties, we conclude that their adjudication in no way depends upon an interpretation of the "just cause" provision of the labor contract. It bears noting that even if the labor contract covering Gonzalez and Repyak recited the rights and obligations arising under the Workers' Compensation Act and expressly provided that a discharge in contravention of the Act was without "just cause," the claims would still fall entirely outside the preemptive sphere of section 301. Neither an employer nor a union can strip an employee of the protections of Illinois law by merely

restating the rights and obligations that arise thereunder in a private labor agreement. As the Supreme Court recognized in *Allis-Chalmers,* section 301 does not accord the substantive provisions of a private labor agreement the supremacy of Federal law, thereby preempting State law. "Such a rule of law would delegate to unions and unionized employers the power to exempt themselves from whatever state labor standards they disfavored." (*Allis-Chalmers Corp. v. Lueck* (1985), 471 U.S. ....., ..., 85 L. Ed. 2d 206, 216, 105 S. Ct. 1904, 1911-12.) We conclude that the circuit court properly granted the motions to strike with respect to Prestress' first affirmative defense and consider next its affirmative defense that the claims are barred for failure to exhaust the grievance procedure established in the collective-bargaining agreement.

In *Midgett v. Sackett-Chicago, Inc.* (1984), 105 Ill. 2d 143, *cert. denied* (1985), 474 U.S. ....., 88 L. Ed. 2d 243, 106 S. Ct. 278, *cert. denied* (1985), 472 U.S. 1032, 87 L. Ed. 2d 642, 105 S. Ct. 3513, this court held that a unionized employee need not plead exhaustion of the grievance-arbitration procedure established in a collective-bargaining agreement in order to state a valid cause of action for retaliatory discharge. In so holding, we observed that the exhaustion of contract remedies is not a prerequisite to the filing of an action sounding in tort. This court also rejected the contention that the Federal labor-law policy favoring arbitration of contractual disputes would be undermined if unionized employees could initially avail themselves of a right of action for an alleged retaliatory discharge in contravention of clearly mandated public policy. Noting the substantial State interest in protecting the rights of employees under the Workers' Compensation Act and in deterring unscrupulous employers who would

otherwise threaten or discharge employees for exercising those rights, we found that the right of action to redress a violation of strong public policy would not have "any perceptible effect on the use of arbitration." 105 Ill. 2d 143, 151.

Prestress argues that we should overrule our holding in *Midgett*. We disagree. Prestress does not cite authority for, nor is this court familiar with, any rule of law requiring a unionized employee to exhaust the grievance procedure established by private labor agreement before filing an action to redress a nonderivative tort claim grounded in a violation of important public policy. Clearly *Allis-Chalmers* does not supply such a rule for, unlike this case, it did not involve a nonderivative State tort action firmly rooted in an important public policy which "proscribe[s] conduct, [and establishes] rights and obligations, independent of a labor contract." (*Allis-Chalmers Corp. v. Lueck* (1985), 471 U.S. U.., ..., 85 L. Ed. 2d 206, 216, 105 S. Ct. 1904, 1912.) Nor will this court premise such a rule on a legal fiction that would purport to hold that unionized employees, in exchange for the rights they derive from a labor contract, accept a requirement that contract remedies be exhausted before bringing a suit to vindicate a right established by important public policy, independent of the labor contract.

While we recognize the importance and "central role of arbitration in our 'system of industrial self-government'" (*Allis-Chalmers Corp. v. Lueck* (1985), 471 U.S. ....., ..., 85 L. Ed. 2d 206, 220, 105 S. Ct. 1904, 1915, quoting *United Steelworkers of America v. Warrior & Gulf Navigation Co.* (1960), 363 U.S. 574, 581, 4 L. Ed. 2d 1409, 1416, 80 S. Ct. 1347, 1352), the fact that an arbitrator is traditionally confined by the labor contract to interpretation and application of its terms evidences that the jurisdiction of the arbitral forum is not without limit. Indeed, the arbitration clause in the parties' collective-bargaining agreement provides that the arbitrator "shall have authority to consider only grievances presenting an arbitrable issue under this Agreement." Further, the arbitration clause expressly limits the scope of an arbitrable grievance to differences of opinion between the parties "with respect to the meaning and application of a term or terms of the Agreement." Thus, by its own terms, the arbitration clause limits the duty to arbitrate to disputes arising under the agreement. The claims here are not in any way derived from the agreement. We therefore conclude that the circuit court properly allowed the motions to strike Prestress' second affirmative defense.

For the reasons stated, the judgment of the circuit court is affirmed, and the cause is remanded for further proceedings consistent with this opinion.

Affirmed and remanded.

JUSTICE RYAN, dissenting:

The majority opinion recognizes that there were collective-bargaining agreements between the employers and the unions covering the employees involved in these consolidated cases. The majority also recognizes that these agreements require "just cause" before an employee may be discharged, and establish grievance procedures, culminating in final and binding arbitration for such grievances. However, using the same rationale of the Wisconsin Supreme Court, which was rejected in *Allis-Chalmers Corp. v. Lueck* (1985), 471 U.S. ....., 85 L. Ed. 2d 206, 105 S. Ct. 1904, the majority of this court finds in these cases that

a tort cause of action arising out of a wrongful discharge is separate and distinct from the "just cause" discharge provisions of the collective-bargaining agreements.

The majority finds support for its conclusion from language in *Allis-Chalmers* which states that not every dispute concerning employment is preempted by the provisions of Federal labor law. It may well be that the Supreme Court, in *Allis-Chalmers*, left the preemption door ajar insofar as permitting certain State causes of actions arising from employment-related disputes. However, the Supreme Court, in *Allis-Chalmers*, expressed no uncertainty as to claims such as are now before us, because that opinion specifically mentioned claims arising out of "unfair discharge" as an example of claims which should not bypass the Federal labor-law scheme by way of a State law tort action. The majority opinion in our case failed to quote the following language from *Allis-Chalmers*, which I find directly addresses the issue before us. In explaining its rationale in *Allis-Chalmers*, the Supreme Court stated:

> "Since nearly any alleged willful breach of contract can be restated as a tort claim for breach of a good-faith obligation under a contract, the arbitrator's role in every case could be bypassed easily if section 301 is not understood to pre-empt such claims. Claims involving vacation or overtime pay, work assignment, *unfair discharge*—in short, the whole range of disputes traditionally resolved through arbitration —could be brought in the first instance in state court by a complaint in tort rather than in contract." (Emphasis added.) *Allis-Chalmers Corp. v. Lueck* (1985), 471 U.S. ....., ..., 85 L. Ed. 2d 206, 220-21, 105 S. Ct. 1904, 1915-16.

Despite this seemingly unambiguous description of the intended scope of the *Allis-Chalmers* rule, the majority

insists that this particular species of "unfair discharge" falls outside its preemptive limits. I find no meaningful basis upon which to distinguish the instant claim from that deemed preempted in *Allis-Chalmers*.

As the majority correctly notes, the pertinent aspect of the test for preemption articulated in *Allis-Chalmers* asks "whether evaluation of the tort claim is inextricably intertwined with consideration of the terms of the labor contract." (*Allis-Chalmers Corp. v. Lueck* (1985), 471 U.S. ....., ..., 85 L. Ed. 2d 206, 216, 105 S. Ct. 1904, 1912.) A tort claim is preempted if its resolution is "'substantially dependent upon analysis of the terms of [the collective-bargaining] agreement.'" *Bartley v. University Asphalt Co.* (1986), 111 Ill. 2d 318, 332, quoting *Allis-Chalmers Corp. v. Lueck* (1985), 471 U.S. ....., ..., 85 L. Ed. 2d 206, 221, 105 S. Ct. 1904, 1916.

The claim for retaliatory discharge must necessarily assert that the employee was wrongfully discharged or, as stated in the collective-bargaining agreement, discharged without just cause or, as phrased by the Supreme Court in *Allis-Chalmers*, unfairly discharged. I do not understand how the majority can conclude that the tort claim of retaliatory discharge in this case is not inextricably intertwined with the terms of the labor contract. The cause of action for retaliatory discharge confers no new right of action against the employer independent of those grievances covered by the collective-bargaining agreement. If *Kelsay v. Motorola, Inc.* (1978), 74 Ill. 2d 172, and its progeny, which created in this State the tort cause of action for retaliatory discharge, had never been decided, an employee discharged for filing a workers' compensation claim still would have had a grievance against his employer under the "just cause" provision

of the collective-bargaining agreement, and this grievance would have been handled pursuant to the procedures established in that agreement. The tort claim for retaliatory discharge does not exist independent of facts covered by the employment agreement. It is another cause of action grafted onto and arising out of the same set of facts that give rise to a grievance under the "just cause" provision of the collective-bargaining agreement.

Consistent with these principles, Prestress contended that a claim of retaliatory discharge is preempted because it necessarily implicates and requires interpretation of the "just cause" provision of the labor contract. In rejecting this assertion, the majority states, "that, however, is not the law in Illinois." I take this statement to mean that, as a matter of State law, the term "just cause" does not necessarily encompass retaliatory dismissals. Therein lies the flaw in the majority's reasoning.

Whether or not one agrees that as a matter of State law "just cause" includes retaliatory discharge is simply irrelevant in my view. The point of *Allis-Chalmers* is that in any case the determination may not be limited by or dependent upon State law. The Supreme Court stated that the question of whether a State tort claim is "sufficiently independent of federal contract interpretation to avoid preemption is, of course, a question of federal law." (*Allis-Chalmers Corp. v. Lueck* (1985), 471 U.S. ....., 85 L. Ed. 2d 206, 217, 105 S. Ct. 1904, 1913.) Thus, a State court lacks authority to declare that as a matter of State law a given claim is or is not within the scope of the "just cause" provision. See Comment, *Midgett v. Sackett in the Aftermath of Allis-Chalmers: The Impact of Federal Labor Law on Retaliatory Discharge Claims*, 6 N. Ill. U. L. Rev. 347, 375 (1986).

In conclusion, I believe the majority violates the clear command of *Allis-Chalmers* by placing a State law gloss on the terms of a collective-bargaining agreement. In so doing, it opens the door to the precise mischief condemned in *Allis-Chalmers*: end runs around the grievance and arbitration processes, and varying interpretations of ostensibly universal terms in labor contracts. If Illinois is free to decide what "just cause" means or does not mean, any and all contract provisions are apparently fair game. I dissent.

JUSTICE MORAN joins in this dissent.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT LIVINGSTON COUNTY, ILLINOIS

JOHN REPYAK and ELSIE REPYAK, Plaintiffs,	)	
vs.	)	Number: 82 L 43
PRESTRESS ENGINEERING CORP., Defendant.	)	

ORDER

The cause coming on to be heard on plaintiff's motion to strike defendant's affirmative defenses, after argument by the parties, the court being advised in the premises, it is hereby ordered that plaintiff's motion is granted.

The court further finds that a question of law on which there is substantial ground for difference of opinion exists and that an immediate appeal from this order will materially advance the ultimate termination of this litigation, and the court certifies the following questions for appeal:

(1) Whether the determination of the Illinois Supreme Court that section 301 of the Labor Management Relations Act, 29 U.S.C. sec. 185, does not bar a cause of action of the type plaintiff is asserting and that the filing of a grievance and exhaustion of the grievance procedure in a union contract are not a prerequisite to filing a retaliatory discharge claim is still viable after the U.S. Supreme Court decision in *Allis Chalmers v. Lueck*, 105 S.Ct. 1904 (4-16-85); and

(2) Whether the U.S. Supreme Court decision in *Allis Chalmers v. Lueck* changes the law of the case established by the Illinois Supreme Court.

DATED: September 16, 1978 /s/ William Caisley
JUDGE

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT LIVINGSTON COUNTY, ILLINOIS

JOSE ISABEL GONZALEZ, A., Plaintiff,	)	
vs.	)	Number: 82-L-37
PRESTRESS ENGINEERING CORP., Defendant.	)	

ORDER

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DATED: September 16, 1978 /s/ William Caisley
JUDGE

STATE OF ILLINOIS
APPELLATE COURT
FOURTH DISTRICT
SUPREME COURT BUILDING
SPRINGFIELD 62701

Clerk of the Court
(217) 782-2586

Research Director
(217) 782-3528

DATE: October 9, 1985

RE: Repyak v. Prestress Engineering Corp.
General No. 4-85-0667

TO COUNSEL:

Application for leave to appeal of Prestress Engineering Corporation DENIED.

DARRYL PRATSCHER, Clerk
Appellate Court
Fourth District

DP:iv

TO:

√ Attorney Julie Badel
Attorney Emmanuel F. Guyon

STATE OF ILLINOIS
APPELLATE COURT
FOURTH DISTRICT
SUPREME COURT BUILDING
SPRINGFIELD 62701

Clerk of the Court
(217) 782-2586

Research Director
(217) 782-3528

DATE: October 9, 1985

RE: Gonzalez v. Prestress Engineering Corp.
General No. 4-85-0666

TO COUNSEL:

Application for leave to appeal of Prestress Engineering Corporation DENIED.

DARRYL PRATSCHER, Clerk
Appellate Court
Fourth District

DP:iv

TO:

√ Attorney Julie Badel
Attorney Emmanuel F. Guyon

OPPOSITION

BRIEF

No. 86-1505

In The

Supreme Court of the United States

October Term, 1986

PRESTRESS ENGINEERING CORPORATION,

Petitioner,

v.

JOSE ISABEL GONZALEZ and JOHN REPYAK,

Respondents.

On Writ of Certiorari to the Supreme Court of Illinois

RESPONDENTS' BRIEF IN OPPOSITION

Emmanuel F. Guyon
Attorney for
Respondents.
5 East Bridge Street
Streator, IL 61364
(815) 673-2361

May 30, 1987

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986
NO. 86-1505

PRESTRESS ENGINEERING CORPORATION,

Petitioner

v

JOSE ISABEL GONZALEZ and JOHN REPYAK,

Respondents

i.

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ii.

QUESTION PRESENTED TO THE COURT

The issue in this case is whether a Sovereign State has the absolute right to declare the public policy of that State to control the private conduct of its citizens, or if that state's declared public policy in worker's compensation cases must yield in every instance to a Federal pre-emption based on a perceived connection to Federal Labor Law as a declaration of national public policy.

iii.

RULE 28.1 STATEMENT

Respondents Jose Gonzalez and John Repyak and Elsie Repyak are private individuals, former union members of Local 996, Laborers International Union, Roanoake, Illinois. They have no corporation affiliation or present union affiliation. Their status before the court is that of a private individual seeking to establish a private cause of action in the courts of the State of Illinois.

TABLE OF AUTHORITIES

Cases:

Statutes:

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986
NO. 86-1505

PRESTRESS ENGINEERING CORPORATION.

Petitioner

v

JOSE ISABEL GONZALEZ and JOHN REPYAK.

Respondents

RESPONDENTS BRIEF IN OPPOSITION TO
A PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF ILLINOIS

RESPONDENTS BRIEF IN OPPOSITION

The Respondents Jose Isabel Gonzalez and John Repyak and Elsie Repyak, by their attorney Emmanuel F. Guyon, respectfully requests the Court deny the petition for Writ of Certiorari seeking review of the decision of the Illinois Supreme Court in this case. That opinion is reported as Gonzalez v Prestress Engineering Corp. (1986) 115 Ill 2d 1.

104 Ill Dec 751, 503 NE 2d 308.

REASONS WHY THE WRIT SHOULD BE DENIED

I. IT IS ONLY WHEN A STATE CAUSE OF ACTION MUST BE RESOLVED BY REFERENCE TO INTERPRETATION OF A COLLECTIVE BARGAINING TERM THAT A STATE REMEDY IS PRE-EMPTED BY THE LABOR MANAGEMENT RELATIONS ACT.

The Workers Compensation Act of the Illinois Statutes is an expression of the public policy of the State of Illinois that provides employees an effective and fair way to seek compensation for injuries sustained in the course of their employment without fear or risk of losing their jobs. Illinois Revised Statutes, 1981, chapter 48, paragraph 138.2. Midgett v Sackett-Chicago, Inc. (1984), 105 Ill 2d 143; 85 Ill Dec 475, 473 NE 2d 1280. The declaration of public policy was originally implemented in Illinois in the case of Kelsay v Motorola, Inc. (1978), 74 Ill 2d 172, 23 Ill Dec. 559, 384 NE 2d 353, where "at-will" employees were prospectively given the right to file actions for retaliatory discharge involving the worker's compensation act. The right was further extended to "union employees" in the case of Midgett v Sackett-Chicago, Inc., id., which case involved

the same plaintiffs here, Jose Gonzalez, John Repyak and Elsie Repyak, the latter being the wife of John Repyak asserting the loss of her expectancy in pension benefits.

The Supreme Court of Illinois rejected the L.M.R.A. 301(a) defense in the case of Gonzalez v Prestress Engineering Corp. (1986) 115 ill 2d 1, 104 Ill Dec 751, 503 NE 2d 308 because the cause of action is based on an independent tort not connected to the labor contract and its captive grievance procedure. The Illinois Supreme Court distinguished the case of Allis-Chalmers v Lueck (1985), 471 U.S. 202, 105 S. Ct. 1904, 85 L. Ed. 206, on the basis that Lueck's claim involved interpretation of a labor contract properly within the penumbra of L.M.R.A. 301, with the claim dependent on the labor contract itself. In contrast, in Gonzalez, the claim of former employees Gonzalez and John Repyak, was independent of, and in no way connected to, the labor contract between the union and the company and possible enforcement of said contract terms. Further, Elsie Repyak, wife of former employee John Repyak, has a claim for loss of an expectancy, the pension benefits, and since she has never had membership in the union there is no basis to say

the wife is governed by any requirement of L.M.R.A. 301(a).

II. A CAUSE OF ACTION FIRMLY ROOTED IN THE PUBLIC POLICY OF THE STATE OF ILLINOIS CONFERS ON EMPLOYEES AND EMPLOYERS IN THE STATE OF ILLINOIS CERTAIN NON-NEGOTIABLE RIGHTS AND IMPOSES CERTAIN NON-NEGOTIABLE DUTIES AND OBLIGATIONS, ALL OF WHICH ARE UNIQUE TO A PARTICULAR STATE, NOT CONNECTED TO ANY NATIONAL LABOR POLICY.

A cause of action firmly rooted in the public policy of a sovereign state is not pre-empted by any Federal common-law of labor policy. A State's interest in protecting the health and well-being of its citizens is paramount when the interest in question does not threaten undue influence with the federal regulatory scheme of labor law. Farmer v United Brotherhood of Carpenters and Joiners, 430 U.S. 290, 97 S. Ct. 1056, 51 L. 3d 2d 338 (1977).

The decisions of the Supreme Court leave no doubt that when the Congress has declared its intent, directly or indirectly, that its enactments alone regulate a part of commerce, State laws are pre-empted. Jones v Rath Packing Co. (1977) 430 U.S. 519, 97 S. Ct. 1305, 51 L. Ed 2d 604; Ray v Atlantic Richfield Co. (1978) 435 U.S. 151, 98

S. Ct. 988. 55 L. Ed 2d 179. The power of Congress to pre-empt state law is derived from the Supremacy Clause of Article VI of the Federal Constitution. Gibbons v Ogden, 9 Wheat 1. 6 L. Ed 23 (1824). and N.L.R.B. v J. & L. Steel Corp., 301 U.S. 1. 81 L. Ed 893. 57 S. Ct. 615 (1937). But Congress has never exercised authority to occupy the entire field of labor legislation.

> "We cannot declare pre-empted all local regulation that touches or concerns in any way the complex inter-relationships between employees. employers. and unions: obviously. much of this is left to the states." Motor Coast Employees v Lockridge. 403 U.S. 274 (at 289) 29 L. Ed 2d 473. 91 S. Ct. 1909 (1971).

The Court thus leaves to the states the right to control and prescribe conduct of its citizens. Whether a particular state law is preempted by a federal statute becomes a question of the intent of Congress. The purpose of Congress is the ultimate touchstone. Malone v White Motor Corp. 435 U.S. 497. 55 L. Ed. 2d 443. 98 S. Ct. 1185 (1978). It is clear that any state retains the right to control its own citizens. individual employees and employers. with its own worker's compensation laws. Indeed. the Federal Rules of Civil Procedure specifically prohibit removal of worker's compensation actions to Federal District

Court. F.R.C.P. 1445(c). Title 28 U.S.C. 1445. This expression by the Congress to allow the states to administer their own worker's compensation laws. to prevent removal of such actions to the Federal Court system. is a statement that worker's compensation laws are unique to each state and should be left to each state for administration. See Malone v White Motor Corp. id. And. there is no potential or actual interference with national labor policy if a state court action is brought on the basis of worker's compensation laws of a particular state.

Here. the plaintiffs are individuals. without the assistance of their former Union. seeking to vindicate a right of action accruing to them alone. There is no upset to the commerce. and there has been no actual or potential strike. lockout. or other interference with the production of goods at the plant of Defendant to justify imposition of national labor policy to this fact situation. Whether plaintiffs win or lose their suit. there will be no impact on national labor policy as their claims are individually brought. and the union has not south to assist them in any way. The rights sought to be vindicated are premised not on any term of a negotiated labor contract. but on a section of the Illinois Worker's

Compensation Act. section 138.4(h). 1981 Illinois Revised Statutes. The tort allowed by the Illinois Supreme Court is based on a section of the statute unique to that state. and there is no interference with any Federal statutory law or Federal common-law. The tort in question is independent of. and not inextricably intertwined with a labor contract. Cf. Allis Chalmers v Lueck. id.

The section to be interpreted by the court. L.M.R.A. section 301. speaks only to "....Suits for violation of contracts between an employer and a labor organization....." (emphasis added) 29 U.S.C. 185(a). The Lueck court quoted Textile Workers v Lincoln Mills. 353 U.S. 448. 1 L. Ed 2d 972. 77 S. Ct. 912 (1957). as establishing a mandate to formulate a Federal common law of national labor policy. one that has an interpretive uniformity and predictability to enable labor disputes to be resolved with a uniform federal interpretation. Bowen v U.S. Postal Service. 459 U.S. 212. 74 L. Ed 2d 402. 103 S. Ct. 588 (1983).

The Lueck court recognized exceptions to the all-encompassing rule that 301 controls every action in the contextual setting of the employee-employer relationship. "Of course. not every dispute concerning employment. or tangentially

involving a provision of a collective bargaining agreement. is a pre-empted by section 301 or other provisions of the federal labor law" (at p. 215). If L.M.R.A.301 and federal labor law was all encompassing the union and the employer could exempt themselves from whatever state labor standards they disfavored. and the Supreme Court felt Congress did not intent to pre-empt state rules that proscribe conduct. or establish rights and obligations. independent of a labor contract.

The Supreme Court itself recognized the rights of states to retain those rights that are categorized as legitimate exercise of state regulatory power. Pre-emption occurs only where a state law might upset the balance of power between labor and management expressed in national labor policy. Machinists v Wisconsin Employment Rel. Commission. 427 U.S. 132. 49 L. Ed 2d 396. 96 S. Ct. 2548 (1976). The potential for upset of this balance between labor and management is not present in this case. and there is no basis to justify review of the cases.

CONCLUSION

Prestress has not carried its burden to show that review in certiorari is to be exercised by this court. For the reasons stated herein the Respondents respectfully suggest that the Supreme Court of the United States decline to issue the Writ of Certiorari to the Supreme Court of Illinois in this case.

Respectfully Submitted.

JOSE ISABEL GONZALEZ, JOHN REPYAK & ELSIE REPYAK,
Plaintiffs, Respondents here

by: Emmanuel F. Guyon
Emmanuel F. Guyon
Their Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Respondent's Brief in Opposition to Petition for a Writ Certiorari to the Supreme Court of Illinois was served by first class mail this 30th day of May, 1987, upon:

Ms. Julie Badel
c/o McDermott, Will & Emery
111 West Monroe Street
Chicago, IL 61603

Emmanuel F. Guyon
EMMANUEL F. GUYON

OPINION

SUPREME COURT OF THE UNITED STATES

PRESTRESS ENGINEERING CORPORATION *v.* JOSE ISABEL GONZALEZ AND JOHN REPYAK

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

No. 86–1505. Decided June 26, 1987

The petition for a writ of certiorari is denied.

JUSTICE WHITE, dissenting.

This case raises the question of whether a state-law claim for retaliatory discharge is pre-empted by § 301 of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U. S. C. § 185(a), when the suing employee is covered by a collective bargaining agreement. The Illinois Supreme Court here, relying on its earlier opinion in *Midgett* v. *Sackett-Chicago, Inc.*, 105 Ill. 2d 143, 473 N. E. 2d 1280 (1984), cert. denied, 472 U. S. 1032 (1984) and 474 U. S. 909 (1985), held that the state claim was not pre-empted. The Court of Appeals for the Eighth Circuit, faced with an almost identical state-law claim for retaliatory discharge, concluded that under our opinion in *Allis-Chalmers Corp.* v. *Lueck*, 471 U. S. 202 (1985), § 301 pre-empted the state-law claim. *Johnson* v. *Hussmann Corp.*, 805 F. 2d 795, 797 (CA8 1986)(Missouri). One other court of appeals has come to a similar conclusion. See *Vantine* v. *Elkhart Brass Manufacturing Co.*, 762 F. 2d 511, 517–518 (CA7 1985)(Indiana). The Second Circuit, just three months ago, concluded that Connecticut's retaliatory-discharge claim was not pre-empted by § 301. *Baldracchi* v. *Pratt & Whitney Aircraft Div., United Technologies Corp.*, 814 F. 2d 102 (1987). The Illinois Supreme Court has interpreted federal law in a manner consistent with the Second Circuit but directly contrary to the Seventh and Eighth Circuits. I would grant the petition and resolve the conflict, rather than wait until the conflict invites more litigation and becomes more acute.